

REMARKS/ARGUMENTS

In the “Response To Arguments” section of the final office action, the Patent Office did not address all the limitations of the claims and ignored key arguments made by the Applicant in the Response of December 30, 2004. Applicant respectfully submits that the final office does not adequately respond to Applicant’s Response. Claims 1-8 are currently pending and Claim 1 is an independent claim.

The final office action did not set forth where each and every element of each and every claim rejected is found nor did the Examiner address all of Applicant’s arguments.

Not only must a showing be made for the rejection to be legal, but it must be made in a manner which gives Applicant an opportunity to address it directly. The vague reference to the cited art cannot be meaningfully rebutted by Applicant and Applicant hereby formally requests that the Examiner set forth where each and every element of each and every claim rejected is found in the prior art reference.

According to M.P.E.P. §2131, a claim is anticipated under 35 U.S.C. § 102 (b) only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. However, the Office Action merely states “Marttinen teaches a strap system comprising a proximal strap 14, 19, 20, with two ends 18, 21, a distal strap 16 with two ends joined to the proximal strap, curved pads 13, 15, and adjustable buckles 22” and does not set forth where each and every element of Claim 1 is found in Marttinen. Thus, applicant respectfully asserts that the final office action does not adequately set forth where each and every element of Claim 1 is found in Marttinen to allow Applicant to meaningfully rebut the rejection

even though Applicant attempted to respond to the office action's vague rejections in its Response of December 30, 2004.

Additionally, the final office action failed to address an argument made by the applicant in response to the prior office action - that Marttinен does not teach or suggest "either of the two ends of the proximal strap being affixed to the distal strap in a position significantly away from the distal strap ends." This argument is not mentioned at all in the "Response to Arguments" section, nor is this limitation addressed in the substance of the rejection itself.

The final office action alleges that "applicants arguments directed to the specific differences in the belt system of Marttinен and the disclosed belt system of the instant invention, it is noted that it is the claims not the specification which set forth the scope and limitations of the invention. Not the specification." However, the above limitation is clearly set forth in Claim 1. Applicant merely repeated what was set forth in the specification for the convenience of the examiner.

Moreover, the final office action failed to adequately address an argument made by the applicant in response to the prior office action - that Marttinен does not teach or suggest a "dual shoulder strap system." The "Response to Arguments" section merely alleges that "in response to applicant's argument that the strap system of Marttinен is not worn over both shoulders by a user in the manner as claimed by applicant and therefore does not result in the strap system forming a 'y' shape on the front of a user, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior

art structure is capable of performing the intended use, then it meets the claim.” However, this response grossly oversimplifies the argument made by the applicant and fails to adequately respond to it.

As stated previously in Applicant’s Response, Marttinen provides for a harness “which comprises a cushioned (13) shoulder belt 14, which passes from the breast of the planting person across the shoulder to the back side, as well as a cushioned 15 side belt 16, which passes from the breast side of the planting person across the right side to the back side.” (Col. 2, lines 35-42). Furthermore, Marttinen provides that by “means of the above locations of the harness belts, the load caused by the weight of the plant on the frame 1 is distributed evenly between the left shoulder, right side, and the left hip. As the shoulder belt 14 is placed on the left shoulder, the strains caused by a support belt, usually placed on the right shoulder, … are avoided.” (Col. 2, lines 54-60). Thus, Marttinen does not teach a dual shoulder strap system and in fact teaches away from a dual shoulder strap system. Applicant is confused as to how Marttinen teaches or suggests a dual shoulder strap system when it in fact teaches against the use of a dual shoulder strap system. Has the Patent Office taken official notice of some fact that the applicant is not aware of? If so, applicant hereby requests that the patent office cite a reference in support of this position under M.P.E.P. 2144.03 (“If the applicant traverses [an assertion taken by official notice] the examiner should cite a reference in support of his or her position.”).

Request for Allowance

It is believed that the prior Response places the above-identified patent application into condition for allowance. It is also believed that the final office action does not adequately address issues raised by the applicant in a prior Response, and is thus non-responsive to that

Response. Therefore, applicant respectfully requests that the final office action be withdrawn and that the claims be allowed.

Request For Interview

Alternatively, Applicant's Attorney respectfully requests an interview with the Examiner Cronin before the next Office Action to expedite the prosecution of this application. This application has been pending since March 10, 2001 and we feel that an interview would be helpful at this juncture.

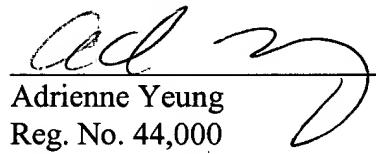
Conclusion

If, in the opinion of the Examiner, an interview would expedite the prosecution of this application, the Examiner is invited to call the undersigned attorney at the number indicated below.

Applicant respectfully requests that a timely Notice of Allowance be issued in this case. Please charge any additional required fee or credit any overpayment not otherwise paid or credited to our deposit account No. 50-1698.

Respectfully submitted,
THELEN REID & PRIEST, LLP

Dated: 4/25/05


Adrienne Yeung
Reg. No. 44,000

Thelen Reid & Priest LLP
P.O. Box 640640
San Jose, CA 95164-0640
Tel. (408) 292-5800
Fax. (408) 287-8040